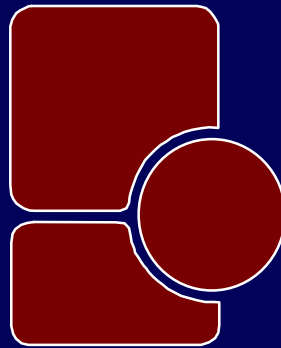


**Joint Legislative Audit and Review Commission  
of the Virginia General Assembly**



# **Gubernatorial Separation Authority**

**Staff Briefing  
June 11, 2001**

# Summary of Findings

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- There are no restrictions on separation packages that can be provided by the Governor to agency heads and other gubernatorial appointees.
- Most governors have provided a month's severance to departing employees.
- While there have been some questionable packages, practices overall have been reasonable and may not warrant a policy change.
- Options are available should the General Assembly wish to limit gubernatorial flexibility or increase its oversight.

# Presentation Outline

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- Study Mandate
- Gubernatorial Authority
- Governors' Practices
- Policy Options

# Study Mandate

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- In November 2000, the Joint Legislative Audit and Review Commission (JLARC) directed its staff to examine gubernatorial authority to provide separation packages to agency heads and gubernatorial appointees.
- At its May 2001 meeting, the Commission approved a June reporting date for the study.

# Gubernatorial Authority

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- **The Governor has broad powers in the area of personnel and finance:**
  - **Article V, Section 7 of the *Constitution of Virginia* gives the Governor the “power to fill vacancies in all offices of the Commonwealth” which are not otherwise provided for.**
  - **Article V, Section 10 provides for the appointment and removal of administrative officers by the Governor.**
  - **The *Code of Virginia* (§2.1-113) designates the Governor as the “Chief Personnel Officer of the Commonwealth.”**
  - **The budgetary powers of the Governor are sufficient to ensure that funds are available for severance payments.**

# Gubernatorial Authority, Continued

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- **JLARC staff found no restrictions on the Governor's ability to establish separation packages:**
  - **Statutory authority is not limited by court rulings or opinions of the Attorney General.**
  - **No executive or legislative staff interviewed could identify any restrictions on the Governor's authority to establish separation packages.**
  - **No limitations of amount could be identified.**
  - **Extensive precedent exists to support the Governor's authority to issue separation packages.**

# Uses of Severance Packages

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- **Agency heads and gubernatorial appointees are not eligible for transitional benefits under the Workforce Transition Act of 1995.**
  - Most gubernatorial appointees are not reappointed.
  - Agency head turnover is high:
    - Wilder to Allen – 75 percent turnover
    - Allen to Gilmore – 41 percent turnover
- **Severance payments are used to assist appointees who transition out of State government.**
- **Severance payments or bonuses can be used as incentives to keep gubernatorial appointees from leaving prior to the end of a term.**

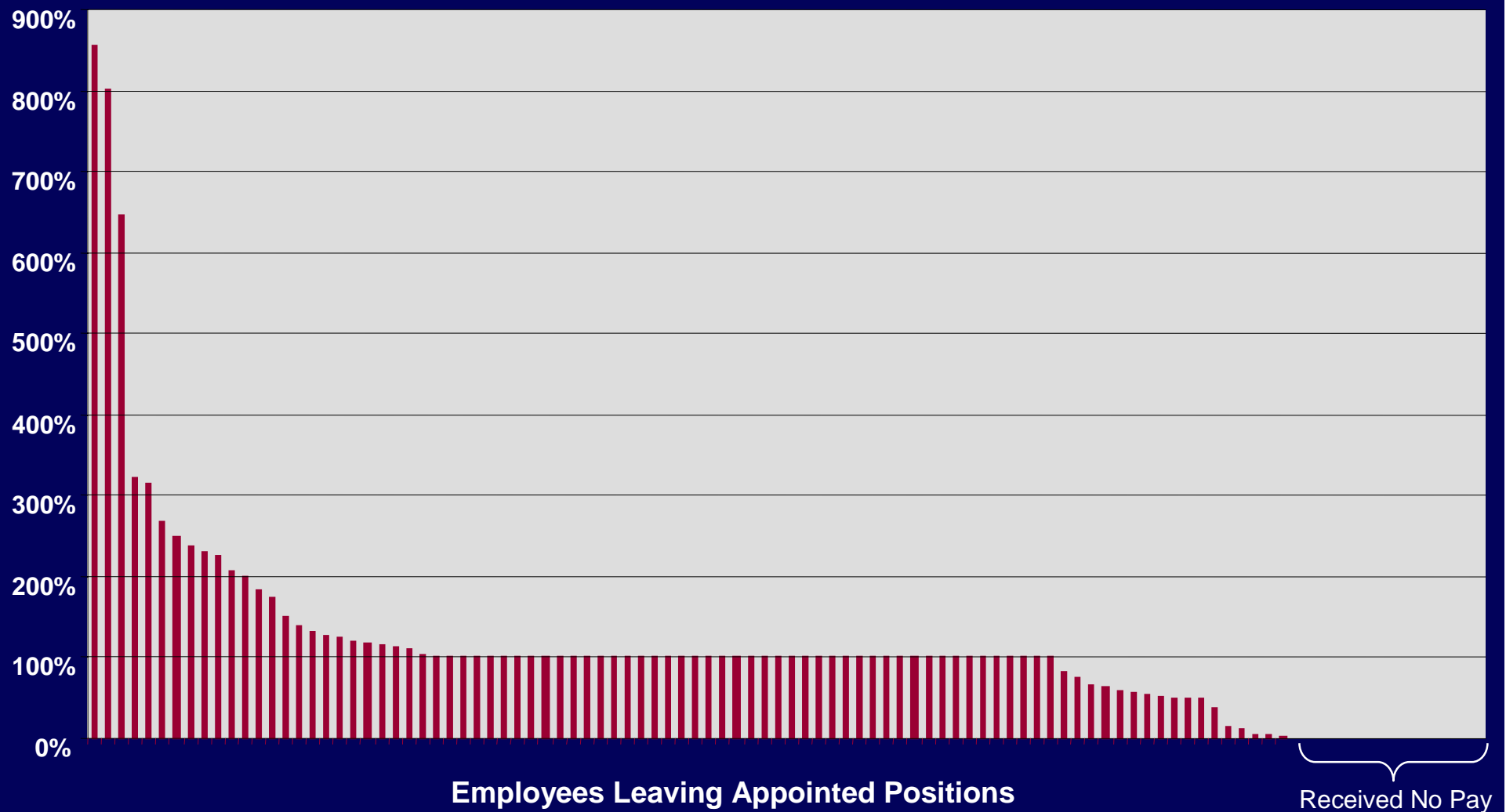
# The Current Governor's Use of Separation Packages

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- From the beginning of the term through May 1, 2001 a total of 109 appointees have left positions appointed by the Governor:
  - 46 separating employees received one month's pay (or the equivalent) in severance
  - 25 received more than one month's pay
  - 17 received less than one month's pay
  - 17 received no pay
  - Four died in service.

# Total Severance Pay as Percentage of Monthly Salary – In Descending Order

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# Characteristics of Separation Packages

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- The typical appointee received severance pay of one month's salary. The average payment was comparable to 1.1 months of salary.
- Some appointees received compensation that included payments toward retirement (9) and life and health insurance (12). Compensation for some form of leave (annual, sick, compensatory) was provided to 21 separating employees.
- Of the 25 employees receiving over a month's pay, five received payments of over three months' compensation value.

# High Value Separation Packages

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- Of the five employees who received over three months' compensation value, two received slightly more than three months' value.
- One package, valued at \$64,025, was negotiated by the Virginia Resource Authority board during the previous administration.
- The Director of the Department of Minority Business Enterprises received three months' separation pay and was kept on the payroll an additional three months (\$49,061 value).
- A Superintendent of Education was provided a package valued at \$80,966. In lieu of severance, the appointee remained on the payroll to provide support during transition and to conduct a study on rural schools.

# Comparison with Separation Policies in Previous Administrations

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- Most Governors, at least since 1977, have provided modest separation packages to appointees.
- In 1977 Governor Godwin authorized “severance pay upon termination of appointment equivalent to, but not in excess of, one month’s salary....”
- As recently as Governor Allen’s term, the Godwin memo has been used as a basis for separation payments.
- Governor Gilmore’s Chief of Staff issued a policy on March 16, 1999 stating that “severance pay is one month’s pay, and any variances from this must receive prior approval from the chief of staff.” Average severance has been 1.1 months’ pay.

# Conclusions

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- **Governors of Virginia have no restrictions on their authority to provide separation packages to appointees. Flexibility in the amounts provided also exists.**
- **For the most part, packages provided by Governors have been modest, approximately one month's pay.**
- **The magnitude and frequency of a few unusually generous packages may not be sufficient reason for substituting binding guidelines for the Governor's judgment.**

# Options for Consideration

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- ***Option 1. Retain the status quo.*** Current practice is generally reasonable and alternatives would be difficult to enforce or monitor.
- ***Option 2. Apply the provisions of the Workforce Transition Act (WTA) to gubernatorial appointees.*** The bottom range of the WTA (4 weeks) is comparable to current practice. Long-term State employees could receive large severance payments.
- ***Option 3. Allow gubernatorial flexibility within specified parameters.*** A proposed limit of 16 weeks would allow gubernatorial flexibility and prevent very large pay-outs.

# Options for Improving Accountability

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- ***Option 4. Require regular reports of separation packages.***  
The General Assembly could require that periodic reports be made to the House Appropriations Committee and Senate Finance Committee.
- ***Option 5. Require regular audits of separation packages.***  
The Auditor of Public Accounts could be directed to regularly audit separation packages and report on questionable packages.